IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 463 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHETH DEVCHAND LAXMICHAND FIRM THROUGH ITS TRUSTEES

Versus

KUMBHAR GOVIND MANJI

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Appearance:

1. Civil Revision Application No. 463 of 1986

MR AV TRIVEDI FOR MR AC GANDHI for the Petitioner

Respondents served

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/09/2002

ORAL JUDGEMENT

This Revision Application preferred under Section 29(2) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent

Act') arises from the judgment and order dated 2nd November, 1985 passed by the learned Extra Assistant Judge, Junagadh in Regular Civil Appeal No.97/1983. The petitioner before this Court is the respondent - plaintiff.

The plaintiffs are a public trust duly registered as such and the trustees of the said Trust. The plaintiffs run and manage a 'Dharmshala' situated at Bhavnath Taleti, Junagadh. The 'Dharmshala' building also has some shops which are known as 'Bhandak'. One of such shops was leased to the defendant no.1 on a monthly rent of Rs.4=00. It appears that the defendant no.1 was in arrears of rent and had sublet the suit shop to the defendant no.2. The plaintiffs, under the suit notice (Ex.29), terminated the tenancy of the defendant no.1 and demanded the arrears of rent and the recovery of the possession of the suit shop. The defendant no.1 failed to act in accordance with the suit notice. The plaintiffs, therefore, instituted Regular Civil Suit No.721/1979 in the Court of Civil Judge (J.D.), Junagadh. The learned trial Judge, under the judgment and order dated 20th April, 1983, decreed the suit. The learned trail Judge was pleased to hold that the defendant no.1 was in arrears of rent and was not ready and willing to pay the rent. Feeling aggrieved, the defendants preferred Regular Civil Appeal No.97/1983 in the Court of District Judge, Junagadh.

The appeal was heard by the learned Extra Assistant Judge, Junagadh. The learned Judge held that the suit notice did not conform with sub-section (2) of Section 12 of the Rent Act. The learned Judge, therefore, allowed the appeal and dismissed the suit. Feeling aggrieved, the plaintiffs have preferred the present Revision Application.

Mr.Trivedi has submitted that it is a common ground that Part-II of the Rent Act has been made applicable to the area in which the suit shop is situated, under Government Notification dated 26th March, 1980 i.e. on the date of the suit the Rent Act did not apply to the suit shop. The suit for eviction was, therefore, filed under the provisions of the Transfer of Property Act, 1882. Since Part-II of the Rent Act became applicable to the suit shop pending the suit, in view of Section 50 of the Rent Act and in view of the law settled by the Hon'ble Supreme Court, it would be sub-section (1) of Section 12 alone which would govern the pending suit and not sub-sections (2) and (3) of Section 12 of the Rent Act. The suit, therefore, could not have been

dismissed for the suit notice not being in conformity with sub-section (2) of Section 12 of the Rent Act. In support of this contention, Mr.Trivedi has relied upon the judgments of the Hon'ble Supreme Court in the matters of SHAH BHOJRAJ KUVERJI OIL MILLS AND GINNING FACTORY V/S. SUBHASH CHANDRA YOGRAJ SINHA [A.I.R. 1961 S.C. 1596] and of MOTIRAM GHELABHAI (deceased by L.R.) V/S. JAGAN NAGAR (deceased by L.R.'s) & ORS. [A.I.R. 1985 S.C. 709].

Earlier, in the matter of CHANDRASINH MANIBHAI & ORS. V/S. SURJIT LAL LADHAMAL CHHABDA & ORS. [A.I.R. 1951 S.C. 199], the three judges' Bench of the Hon'ble Supreme Court upheld the view of the Full Bench of the Bombay High Court in the matter of NILKANTH RAMCHANDRA CHANDOLE V/S. RASIKLAL MULCHAND GUJAR [A.I.R. 1949 BOMBAY 210]. In similar set of facts, the Hon'ble Supreme Court held that, Section 12 of the Rent Act is prospective in its application i.e. Section 12 shall apply to the cases instituted after the Rent Act is applied to the premises in question. The said judgment has been explained by the Hon'ble Supreme Court in the matter of Shah Bhojraj Kuverji Oil Mills (supra), the Hon'ble Supreme Court has held that it is sub-sections (2) and (3) of Section 12 of the Rent Act which are prospective in its application i.e. the said sections can be applied to the cases which are instituted after the Rent Act has been made applicable to the concerned area. However, sub-section (1) of Section 12 of the Rent Act is retrospective. The Court held that, "...The second contention urged by the learned Attorney-General that Section 12(1) applied from the date on which the Act was extended to the area in question is, in our opinion, sound. Section 12(1) enacts a rule of decision, and it says that a landlord is not entitled to possession if the tenant pays or shows his readiness and willingness to pay the standard rent and to observe the other conditions of the tenancy."

The above view of the Hon'ble Supreme Court has been confirmed by it in the latter judgment in the matter of Motiram Ghelabhai (supra).

In the present case, there is no dispute that until 26th March, 1980 i.e. until after the date of the institution of the suit the provisions of Part-II of the Rent Act did not apply to the suit shop. The suit, therefore, could not have been defeated on its failure to meet the conditions specified either in sub-section (2) or sub-section (3) of Section 12 of the Rent Act. So far as sub-section (1) of Section 12 of the Rent Act is

concerned, it is established before both the Courts below that the defendant no.1 was in arrears of rent and was not ready and willing to pay the rent. In view of the said finding, in my opinion, the Court below ought to have confirmed the decree for possession passed by the trial Court. The plaintiffs could not have been non-suited on the ground that the suit notice did not conform with the requirements of sub-section (2) of Section 12 of the Rent Act.

In the result, the Revision Application succeeds and is hereby allowed with costs. The impugned judgment and order of the learned Extra Assistant Judge, Junagadh passed in Regular Civil Appeal No.97/1983 is quashed and set aside. The decree for possession and arrears of rent passed by the learned Civil Judge (J.D.), Junagadh in Regular Civil Suit No.721/1979 is restored. Rule is made absolute.

( Ms. R.M. Doshit, J. )

/sakkaf